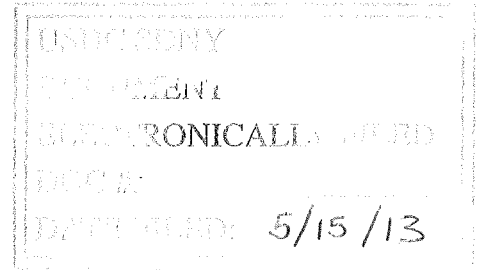


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
FRANKIE PEREZ,	:	13 Civ. 3025 (DLC)
	:	08 Cr. 798
Petitioner,	:	
	:	<u>ORDER</u>
-v-	:	
UNITED STATES OF AMERICA,	:	
Respondent.	:	
-----X	:	



DENISE COTE, District Judge:

On May 3, 2013, the Pro Se Office received petitioner Frankie Perez's ("Perez") motion to vacate his sentence pursuant to 28 U.S.C. § 2255. A judgment of conviction was entered against Perez on April 6, 2009 by this Court. Perez appealed his conviction to the Court of Appeals for the Second Circuit, which affirmed his conviction on September 23, 2010. See United States v. Perez, 396 Fed. App'x 711 (2d Cir. 2010). There is no indication in the record that Perez filed a petition for writ of certiorari to the United States Supreme Court.

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") provides for a one-year period of limitations for a federal inmate to file a habeas petition under 28 U.S.C. § 2255. The limitations period runs from the latest of:

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the

Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255.

A conviction becomes final for AEDPA purposes "when the time expires for filing a petition for certiorari contesting the appellate court's affirmation of the conviction." Clay v. United States, 537 U.S. 522 (2003). A petition for writ of certiorari to the Supreme Court must be filed within ninety days after the entry of judgment by the Court of Appeals. See S.Ct.R. 13(1). The ninety-day period for filing the petition runs "from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate." S.Ct.R. 13(3). Accordingly, Perez's conviction can be considered final as of December 22, 2010. Unless one of the above exceptions applies, his petition is barred by AEDPA's statute of limitations.

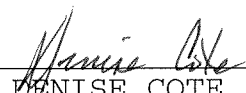
The one-year limitations period for Section 2255 petitions may be equitably tolled, however, where a petitioner shows "(1)

that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way and prevented timely filing." Rivas v. Fischer, 687 F.3d 514, 538 (2d Cir. 2012) (citation omitted). In addition to demonstrating the existence of extraordinary circumstances, the petitioner must show "that those circumstances caused him to miss the original filing deadline." Harper v. Ercole, 648 F.3d 132, 137 (2d Cir. 2011).

Accordingly, Perez is directed to show cause by affirmation by July 15, 2013, why the one-year statute of limitations should not bar his petition. No answer shall be required at this time, and all further proceedings shall be stayed for sixty days from the date of this Order. If Perez fails to comply with this Order by July 15, 2013, his petition will be dismissed as time-barred.

SO ORDERED:

Dated: New York, New York
May 15, 2013



DENISE COTE
United States District Judge

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